

**RULES
OF
DEPARTMENT OF COMMERCE AND INSURANCE
DIVISION OF REGULATORY BOARDS
TENNESSEE STATE BOARD OF ACCOUNTANCY**

**CHAPTER 0020-3
RULES OF PROFESSIONAL CONDUCT**

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0020-3-.01 DEFINITIONS.

- (1) For the purpose of this Chapter, unless the context otherwise requires:
 - (a) “Client” shall be defined as in T.C.A. §62-1-103;
 - (b) “Enterprise” means any person(s) or entity, whether organized for profit or not, with respect to which a licensee performs professional services;
 - (c) “Firm” means a sole proprietorship, partnership, or corporation holding a permit or required to hold a permit issued under T.C.A. §§62-1-108, 62-1-109 or corresponding prior law;
 - (d) “Licensee” shall be defined as in T.C.A. §62-1-103;
 - (e) “Professional service” means any service performed or offered by a licensee for a client in the course of the practice of public accountancy.

Authority: T.C.A. §§62-1-105 and 62-1-111. **Administrative History:** Original rule filed June 9, 1981; effective August 18, 1981. Amendment filed February 18, 1993; effective April 3, 1993. Amendment filed May 11, 1995; effective July 24, 1995. Repeal and new rule filed June 10, 1999; effective August 24, 1999.

0020-3-.02 APPLICABILITY.

- (1) The provisions of this Chapter shall apply to all professional services performed in the practice of public accountancy or in the provision of accounting services, and shall apply to all licensees except:
 - (a) Where the wording of a rule indicates otherwise; and
 - (b) A licensee who engages in the practice of public accountancy outside the United States will not be subject to disciplinary action by the Board for departing from any of the provisions of this chapter if his/her conduct is in accord with the standards of professional conduct applicable to the practice of public accountancy in the country in which he/she is practicing. However, where a licensee's name is associated with financial statements in such a manner as to imply that the licensee is acting as an independent accountant and under circumstances which would

(Rule 0020-3-.02, continued)

entitle the reader to assume that United States practices are followed, the licensee shall comply with Rules 0020-3-.08 and 0020-3-.09.

- (2) A licensee shall comply with the AICPA Code of Professional Conduct when these rules are silent on any matter.

Authority: T.C.A. §§62-1-105 and 62-1-111. **Administrative History:** Original rule filed June 9, 1981; effective August 18, 1981. Amendment filed February 18, 1993; effective April 3, 1993. Amendment filed April 20, 1994; effective July 4, 1994. Repeal and new rule filed June 10, 1999; effective August 24, 1999.

0020-3-.03 INDEPENDENCE.

- (1) A licensee shall not perform attest services in such a manner as to imply that he/she is acting as an independent accountant with respect thereto unless he/she is independent with respect to such enterprise. Impairment of independence includes but is not limited to the following:
 - (a) During the period of a professional engagement, or at the time of expressing an opinion, the licensee:
 1. Had or was committed to acquire any direct or material indirect financial interest in the enterprise; or
 2. Was a trustee of any trust or executor or administrator of any estate if such trust or estate had or was committed to acquire any direct or material indirect financial interest in the enterprise; or
 3. Had any joint closely-held business investment with the enterprise or any officer, director, or principal stockholder thereof which was material in relation to the net worth of either the licensee or the licensee's firm; or
 4. Had any loan to or from the enterprise or any officer, director, or principal stockholder of the enterprise except as specifically permitted in 0020-3-.03(2).
 - (b) During the period covered by the financial statements, during the period of the professional engagement, or at the time of expressing an opinion, the licensee:
 1. Was connected with the enterprise as a promoter, underwriter, or voting trustee, as a director or officer, or in any capacity equivalent to that of a member of management or of an employee; or
 2. Was a trustee for any pensions or profit-sharing trust of the enterprise.
- (2) This paragraph grandfathers the following types of loans obtained from a financial institution under that institution's normal lending procedures, terms, and requirements, and that meet the other specified conditions stated herein, and (a) existed as of January 1, 1992; (b) were obtained from a financial institution prior to its becoming a client requiring independence; (c) were obtained from a financial institution for which independence was not required and were later sold to a client for which independence is required; or (d) were obtained from a firm's financial institution client requiring independence, by a borrower prior to his or her becoming a CPA with respect to such client. However, independence will be considered to be impaired if, after January 2, 1992, a licensee obtains a loan of the type described in this paragraph from an entity that, at the time of obtaining the loan, is a client requiring independence. These loans must, at all times, be current as to all terms and such terms shall not be renegotiated after the latest of the dates in (a) through (d) above.

(Rule 0020-3-.03, continued)

- (a) Home mortgages.
 - (b) Other secured loans. The collateral on such loans must equal or exceed the remaining balance of the loan at January 1, 1992 and at all times thereafter.
 - (c) Loans not material to the CPA's or PA's net worth.
- (3) This paragraph permits the following types of personal loans obtained from a financial institution client for which independence is required under that institution's normal lending procedures, terms, and requirements. Such loans must, at all times, be kept current as to all terms.
- (a) Automobile loans and leases collateralized by the automobile.
 - (b) Loans of the surrender value under terms of an insurance policy.
 - (c) Borrowings fully collateralized by cash deposits at the same financial institution (e.g., "passbook loans").
 - (d) Credit cards and cash advances on checking accounts with an aggregate balance not paid currently of \$5,000 or less.

Authority: T.C.A. §§62-1-105(e)(4) and 62-1-111. **Administrative History:** Original rule filed June 9, 1981; effective August 18, 1981. Amendment filed February 18, 1993; effective April 3, 1993. Repeal and new rule filed June 10, 1999; effective August 24, 1999.

0020-3-.04 INTEGRITY AND OBJECTIVITY.

- (1) In the performance of any professional service, a licensee shall maintain objectivity and integrity, shall be free of any undisclosed conflicts of interest, and shall not knowingly misrepresent facts or subordinate his or her judgment to others.

Authority: T.C.A. §§62-1-105 and 62-1-111. **Administrative History:** Original rule filed June 9, 1981; effective August 18, 1981. Amendment filed February 18, 1993; effective April 3, 1993. Repeal and new rule filed June 10, 1999; effective August 24, 1999.

0020-3-.05 CONTINGENT FEES, COMMISSIONS, AND OTHER CONSIDERATION.

- (1) As used in this rule unless the context otherwise requires:
- (a) "Attest" shall be defined as in T.C.A. §62-1-103.
 - (b) "Audit" means an examination of financial statements of a person or entity by a certified public accountant or public accountant, conducted in accordance with generally accepted auditing standards, to determine whether, in the opinion of the certified public accountant or public accountant, the statements conform with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting.
 - (c) "Commission" means compensation for recommending or referring any product or service to be supplied by another person.

(Rule 0020-3-.05, continued)

- (d) “Compilation of a financial statement” means a presentation of information in the form of a financial statement that is the representation of any other person without the undertaking of the certified public accountant or public accountant to express any assurance on the statement.
 - (e) “Consideration” means compensation other than a commission, including but not limited to compensation for recommending or referring any service of a certified public accountant or public accountant to any person.
 - (f) “Contingent fee” means a fee established for the performance of any service pursuant to an arrangement under which a fee will not be charged unless a specified finding or result is attained, or under which the amount of the fee is otherwise dependent upon a finding or result of such service. “Contingent fee” does not mean a fee fixed by a court or other public authority, or a fee related to any tax matter which is based upon the results of a judicial proceeding or the findings of a governmental agency.
 - (g) “Examination of prospective financial information” means an evaluation by a certified public accountant or public accountant of a forecast or projection, the support underlying the assumptions in the forecast or projection, whether the presentation of the forecast or projection is in conformity with professional presentation guidelines, or whether the assumptions in the forecast or projection provide a reasonable basis for the forecast or projection.
 - (h) “Person” means any natural person, corporation, partnership, or other entity.
 - (i) “Review of a financial statement” means to perform inquiries and analytical procedures that permit a certified public accountant or public accountant to determine whether there is a reasonable basis for expressing limited assurance that there are no material modifications that should be made to financial statements in order for them to be in conformity with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting.
- (2) A licensee shall neither pay any consideration or commission to obtain a client nor accept any consideration or commission for the referral of a client to others when the licensee or the licensee's firm also performs for that client any of the following:
- (a) An audit or review of a financial statement;
 - (b) A compilation of a financial statement when the licensee expects, or reasonably might expect that a third party will use the financial statement, and the licensee's compilation does not disclose a lack of independence;
 - (c) An examination of prospective financial information; or
 - (d) Other attest services.
- This prohibition applies during the period in which the licensee is engaged to perform any of the services listed in this paragraph and the period covered by any historical financial statements involved in such listed services.
- (3) A licensee who is not prohibited by this rule from performing services or receiving consideration or a commission and who is paid or expects to be paid consideration or a commission shall disclose that fact in compliance with the requirements of T.C.A. §62-1-122 and Rule 0020-3-.06 to any person to whom the licensee recommends or refers a product or service to which the commission or consideration relates.

(Rule 0020-3-.05, continued)

- (4) Any licensee who accepts consideration or a commission for a referral shall disclose such acceptance or payment to the client in compliance with the requirements of T.C.A. §62-1-122 and Rule 0020-3-.06.
- (5) A licensee shall not receive or agree to receive a contingent fee from a client for the following:
 - (a) Performance of any professional services for a client for whom the licensee or person associated with the licensee performs any of the following:
 - 1. An audit or review of a financial statement;
 - 2. A compilation of a financial statement when the licensee expects, or reasonably might expect that a third party will use the financial statement, and the licensee's compilation does not disclose a lack of independence;
 - 3. An examination of prospective financial information; or
 - 4. Other attest services.
 - (b) Preparation of an original tax return.

This prohibition applies during the period in which the licensee is engaged to perform any of the services listed in this paragraph and the period covered by any historical financial statements involved related to such services.
- (6) Any licensee who accepts or agrees to accept a contingent fee shall disclose the terms of such contingent fee to the client in compliance with the requirements of T.C.A. §62-1-123 and Rule 0020-3-.06.
- (7) Nothing in this rule shall be construed to prohibit:
 - (a) Payments for the purchase of all, or a part, of an accounting practice;
 - (b) Retirement payments to persons formerly engaged in the practice of public accountancy or payments to the heirs or estates of such persons; or
 - (c) Payments, including incentive or bonus payments, to employees or members of an accounting firm as compensation for their services.

Authority: T.C.A. §§62-1-105; 62-1-111; 62-1-122 and 62-1-123. **Administrative History:** Original rule filed June 9, 1981; effective August 18, 1981. Amendment filed February 18, 1993; effective April 3, 1993. Amendment filed May 11, 1995; effective July 24, 1995. Amendment filed February 16, 1998; effective May 2, 1998. Repeal and new rule filed June 10, 1999; effective August 24, 1999.

0020-3-.06 DISCLOSURES.

- (1) A licensee who is not otherwise prohibited from performing services or receiving consideration or a commission and who is paid or expects to be paid consideration or a commission shall disclose that fact in compliance with the requirements of this rule to any person to whom the licensee recommends or refers a product or service to which the commission relates.

(Rule 0020-3-.06, continued)

- (2) Any licensee who directly or indirectly accepts consideration or a commission for a referral shall disclose such acceptance or payment to the client in compliance with the requirements of this rule.
- (3) Any licensee who directly or indirectly accepts or agrees to accept a contingent fee shall disclose the terms of such contingent fee to the client in compliance with the requirements of this rule.
- (4) The disclosure must:
 - (a) Be in writing and be clear and conspicuous;
 - (b) State the amount of the consideration or commission or the basis on which it will be computed; and
 - (c) Be made at or prior to the time of the recommendation or referral of the product or service for which consideration or commission is paid or prior to the client retaining the licensee to whom the client has been referred for which a referral fee is paid, or
 - (d) Be made prior to the time the licensee undertakes representation of or performance of the service upon which a contingent fee will be charged.
- (5) The following form may be used to comply with the disclosures required by this rule and T.C.A. §§62-1-122 and 62-1-123. A form which contains additional information may be used by a licensee if the form includes the minimum disclosure requirements.

STATEMENT OF DISCLOSURE OF CONTINGENT FEES,
COMMISSIONS AND OTHER CONSIDERATION

Certified public accountants and public accountants are required by law to disclose to clients certain fees and commissions they directly or indirectly are to receive related to goods and services provided to those clients.

The purpose of this disclosure statement is to acknowledge that the disclosure has been made and a copy of this statement has been provided to each of the signatories thereof.

I hereby acknowledge that on this _____ day of _____, 199____.

_____ has disclosed that he/she/the firm will receive a
CPA/PA/Firm

commission/contingent fee/consideration of _____
Commission/Fee/Consideration or Basis Thereof

in relation to goods or services he/she/the firm has agreed to provide or recommend.

Client (signature)

Date

CPA/PA/Firm (signature)

Date

(Rule 0020-3-.06, continued)

Authority: T.C.A. §§62-1-105; 62-1-111; 62-1-122 and 62-1-123. **Administrative History:** Original rule filed June 9, 1981; effective August 18, 1981. Amendment filed February 18, 1993; effective April 3, 1993. Amendment filed February 16, 1998; effective May 2, 1998. Repeal and new rule filed June 10, 1999; effective August 24, 1999.

0020-3-.07 COMPETENCE.

- (1) A licensee shall comply with the following standards and with any interpretations thereof by bodies designated by the Council of the American Institute of Certified Public Accountants, or by other entities having similar generally recognized authority.
 - (a) Professional Competence. Undertake only those professional services that the licensee or the licensee's firm can reasonably expect to be completed with professional competence.
 - (b) Due Professional Care. Exercise due professional care in the performance of professional services.
 - (c) Planning and Supervision. Adequately plan and supervise the performance of professional services.
 - (d) Sufficient Relevant Data. Obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any professional services performed.

Authority: T.C.A. §§62-1-105(e)(4) and 62-1-111. **Administrative History:** Original rule filed June 9, 1981; effective August 18, 1981. Amendment filed February 18, 1993; effective April 3, 1993. Repeal and new rule filed June 10, 1999; effective August 24, 1999.

0020-3-.08 COMPLIANCE WITH STANDARDS.

- (1) A licensee who performs attest, management advisory, tax, or other professional services shall comply with standards promulgated by the American Institute of Certified Public Accountants or by other entities having similar authority as recognized by the Board. Other pronouncements that have similar generally recognized authority are considered to be interpretations of generally accepted auditing standards, and departures therefrom must be justified.

Authority: T.C.A. §§62-1-105(e)(4) and 62-1-111. **Administrative History:** Original rule filed June 9, 1981; effective August 18, 1981. Amendment filed February 18, 1993; effective April 3, 1993. Repeal and new rule filed June 10, 1999; effective August 24, 1999.

0020-3-.09 ACCOUNTING PRINCIPLES.

- (1) If financial statements or other financial data contain any departure from an accounting principle promulgated by the Financial Accounting Standards Board and its predecessors, the Governmental Accounting Standards Board, or by other entities having similar authority as recognized by the Board, a licensee shall not:
 - (a) Express an opinion or state affirmatively that the statements or other data of any entity are presented in conformity with generally accepted accounting principles; or
 - (b) State that he or she is not aware of any material modifications that should be made to such statements or data in order for them to be in conformity with generally accepted accounting principles.

(Rule 0020-3-.09, continued)

- (2) If, however, the statements or data contain such a departure and the licensee can demonstrate that due to unusual circumstances the financial statements or data would otherwise have been misleading, the licensee may comply with this rule by describing the departure, its approximate effects, if practicable, and the reasons why compliance with the principle would result in a misleading statement.

Authority: T.C.A. §§62-1-105(e)(4) and 62-1-111. **Amendment History:** Original rule filed June 9, 1981; effective August 18, 1981. Amendment filed February 18, 1993; effective April 3, 1993. Repeal and new rule filed June 10, 1999; effective August 24, 1999.

0020-3-.10 CONFIDENTIAL CLIENT INFORMATION.

- (1) A licensee shall not disclose any confidential client information without the specific consent of the client.
- (2) This rule shall not be construed to:
 - (a) Relieve a licensee of his or her professional obligations under Rules 0020-3-.08 and 0020-3-.09;
 - (b) Affect in any way the licensee's obligation to comply with a validly issued and enforceable subpoena or summons;
 - (c) Prohibit review of a licensee's professional practice by the AICPA, a state CPA society or state PA association, or the Board;
 - (d) Preclude a licensee from initiating a complaint with or responding to any inquiry made by a recognized investigative or disciplinary body;
 - (e) Prohibit a licensee from utilizing any such relevant information in the defense of a claim or reasonably anticipated claim against the licensee; or
 - (f) Restrict the exchange of information with a recognized investigative or disciplinary body.
- (3) Licensees of a recognized investigative or disciplinary body and professional practice reviewers shall not use to their own advantage or disclose any licensee's confidential client information that comes to their attention in carrying out their official responsibilities.

Authority: T.C.A. §§62-1-105; 62-1-111 and 62-1-116. **Administrative History:** Original rule filed June 9, 1981; effective August 18, 1981. Amendment filed February 18, 1993; effective April 3, 1993. Repeal and new rule filed June 10, 1999; effective August 24, 1999.

0020-3-.11 RECORDS.

- (1) A licensee shall, upon request made within a reasonable time, furnish to his client or former client:
 - (a) A copy of any report or other records belonging to, or obtained from or on behalf of, the client which the licensee removed from the client's account, but the licensee may make and retain copies of such documents when they form the basis for work performed by him;
 - (b) Any accounting or other records belonging to, or obtained from or on behalf of, the client which the licensee removed from the client's premises or received for the client's account, but the licensee may make and retain copies of such documents when they form the basis for work performed by him; and

(Rule 0020-3-.11, continued)

- (c) A copy of the licensee's working papers, to the extent that such working papers include records which would ordinarily constitute part of the client's books and records and are not otherwise available to the client.

Provided, however, that nothing in this rule shall require a licensee to furnish any work product to his/her client or others before the client has made satisfactory arrangements for payment for services rendered to or on behalf of such client.

Authority: T.C.A. §§62-1-105; 62-1-111 and 62-1-115. **Administrative History:** Original rule filed June 9, 1981; effective August 18, 1981. Repeal filed February 18, 1993; effective April 3, 1993. Original rule filed June 10, 1999; effective August 24, 1999.

0020-3-.12 DISCREDITABLE ACTS.

- (1) A licensee shall not commit any act that reflects adversely on fitness to hold a CPA certificate, PA registration or a permit to practice as a CPA or PA firm.
- (2) A licensee or a candidate for licensure who solicits, discloses, and/or uses information obtained through violation of any nondisclosure statement of the Uniform CPA Examination shall be considered to have committed an act discreditable to the profession.

Authority: T.C.A. §§62-1-105 and 62-1-111. **Administrative History:** Original rule filed June 9, 1981; effective August 18, 1981. Amendment filed February 18, 1993; effective April 3, 1993. Repeal and new rule filed June 10, 1999; effective August 24, 1999.

0020-3-.13 ACTING THROUGH OTHERS.

- (1) A licensee shall not permit others to carry out on his/her behalf, either with or without compensation, any act which, if carried out by the licensee, would constitute a violation of this chapter.

Authority: T.C.A. §§62-1-105 and 62-1-111. **Administrative History:** Original rule filed June 9, 1981; effective August 18, 1981. Amendment filed February 18, 1993; effective April 3, 1993. Repeal and new rule filed June 10, 1999; effective August 24, 1999.

0020-3-.14 ADVERTISING AND OTHER FORMS OF SOLICITATION.

- (1) A licensee shall not seek to obtain clients by advertising or other forms of solicitation in a manner that is false, misleading or deceptive.
- (2) Solicitation by the use of coercion, over-reaching or harassing conduct is prohibited.

Authority: T.C.A. §§62-1-105 and 62-1-111. **Administrative History:** Original rule filed June 9, 1981; effective August 18, 1981. Amendment filed February 18, 1993; effective April 3, 1993. Amendment filed May 11, 1995; effective July 24, 1995. Repeal and new rule filed June 10, 1999; effective August 24, 1999.

0020-3-.15 FIRMS.

- (1) A certified public accountant or public accountant shall not practice under a name or style which would tend to imply the existence of a partnership or corporation when, in fact, there is no partnership or corporation.

(Rule 0020-3-.15, continued)

- (2) A fictitious CPA or PA firm name (that is, one not consisting of the names or initials of one or more present or former partners, members or shareholders) may not be used by a CPA firm unless such name has been registered with and approved by the Board, and it is not false or misleading.
- (3) A certified public accountant or public accountant shall not practice under:
 - (a) Names similar to or the same as existing fictitious names within the State of Tennessee;
 - (b) Names which tend to mislead regarding the nature of the business or the affiliation of the trade name user with another business entity;
 - (c) An entity using more than one (1) fictitious name;
 - (d) A firm name containing the name of an individual whose license has been suspended or revoked by the Board;
 - (e) A firm name which includes the name of a person who is neither a present nor a past partner, member or shareholder of the firm; or
 - (f) A firm name which includes the name of a person who is not a CPA, if the title "CPAs" is included in the firm name.
- (4) The Board may disapprove of the use of any fictitious name that falls within one (1) of the prohibitions listed in paragraph (3) of this rule or if it determines after notice and hearing that the trade name is deceptive.
- (5) A certified public accountant or public accountant may practice under his/her own name or that of inactive or deceased partners or shareholders who were certified public accountants or public accountants. A partner or shareholder surviving the death or withdrawal (unless (3)(d) applies) of all other partners or shareholders may continue to practice under the partnership or professional association name for up to two (2) years after becoming a sole practitioner.
- (6) When a firm name violation is determined to exist, the firm shall have sixty (60) days after notification by the Board to come into compliance with all applicable rules and statutes.

Authority: T.C.A. §§62-1-105; 62-1-108; 62-1-111 and 62-1-113(i). **Administrative History:** Original rule filed June 9, 1981; effective August 18, 1981. Amendment filed February 18, 1993; effective April 3, 1993. Repeal and new rule filed June 10, 1999; effective August 24, 1999.

0020-3-.16 NOTIFICATION TO THE BOARD

- (1) A licensee shall notify the Board in writing within thirty (30) days of any change of name, address and, in the case of individual CPAs and PAs, change of employment.
- (2) Except as otherwise provided, a licensee shall respond in writing to any communication from the Board requesting a response within thirty (30) days of the mailing of such communication by registered or certified mail to the last address furnished to the Board by the licensee.
- (3) Upon the receipt of a complaint against a licensee, the Board may transmit a copy of such complaint to the licensee. Such licensee shall, within fourteen (14) days of receipt, file a written answer to the complaint with the Board, unless otherwise granted an extension of time.

(Rule 0020-3-.16, continued)

Authority: T.C.A. §§62-1-105 and 62-1-111(a)(12)(c). **Administrative History:** Original rule filed June 9, 1981; effective August 18, 1981. Amendment filed August 7, 1985; effective September 6, 1985. Amendment filed February 18, 1993; effective April 3, 1993. Repeal and new rule filed June 10, 1999; effective August 24, 1999.